

SENATE BILL NO. 286

INTRODUCED BY RYAN, MUSGROVE, GLASER

A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROVIDING THAT~~; REVISING CERTAIN NOTIFICATION AND RETAINAGE PROVISIONS WITH RESPECT TO PUBLIC CONSTRUCTION CONTRACTS; ~~CERTAIN NOTICE REQUIREMENTS PERTAINING TO BRINGING AN ACTION AGAINST A CONTRACTOR'S SECURITY DO NOT APPLY TO SUBCONTRACTORS~~; ELIMINATING THE REQUIREMENT ON NONPUBLIC CONSTRUCTION CONTRACTS THAT A PERSON RESPONSIBLE FOR CONSTRUCTION PAYMENTS TO A CONTRACTOR OR SUBCONTRACTOR MUST BE INFORMED THAT INTEREST ACCRUES ON LATE CONSTRUCTION PAYMENTS; REDUCING THE AMOUNT OF RETAINAGE ON NONPUBLIC CONSTRUCTION CONTRACTS FROM 10 PERCENT TO 5 PERCENT; AND AMENDING SECTIONS ~~18-2-206~~; 28-2-2104; AND 28-2-2110, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 18-2-206, MCA, is amended to read:~~

~~"18-2-206. Notice to contractor concerning subcontractor. (1) (a) A person, firm, or corporation furnishing provender, other than a subcontractor, who provides provisions, materials, or supplies to a contractor, contractor's agent, or subcontractor of the contractor to be used in the construction, performance, carrying on, prosecution, or doing of any work being done for the state or any county, city, town, district, municipality, or other public body shall, not later than 30 days after the date of the first delivery to a subcontractor or agent of a person, firm, or corporation having a subcontract for the construction, performance, carrying on, prosecution, or doing of the work, give a notice of a right of action on the security provided for in 18-2-201 to the contractor or the contractor's agent.~~

~~(b) A subcontractor of the contractor is not subject to the notice provisions of this section but is subject only to the notice provisions under 18-2-204.~~

~~(2) (a) The notice must be delivered personally or sent by certified mail to the contractor or the contractor's agent.~~

~~(b) The notice must be in writing and state:~~

~~(i) that it is a notice of a right of action on the security;~~

1 ~~—— (ii) that the person, firm, or corporation giving the notice has commenced to deliver provender, delivering~~
2 ~~provisions, materials, or supplies;~~

3 ~~—— (iii) the name of the subcontractor or contractor, contractor's agent, or subcontractor of the contractor~~
4 ~~who placed the order or to whom the provender, provisions, materials, or supplies were delivered; and~~

5 ~~—— (iv) that a right of action exists against the contractor and that the contractor's security will be held for~~
6 ~~the unpaid price if the supplier person supplying the provisions, materials, or supplies is not paid.~~

7 ~~—— (3) To have a right of action against the contractor and the security under this part, a person, firm, or~~
8 ~~corporation shall give the written notice required by this section must be in substantially the form described in~~
9 ~~subsection (2). Any other type of actual or constructive notice is not sufficient.~~

10 ~~—— (4) A suit or action may not be maintained in any court under this section against the contractor or the~~
11 ~~security of the contractor to recover for the provender, provisions, materials, or supplies or any part thereof~~
12 ~~unless the provisions of this part section have been complied with."~~

13
14 **Section 1.** Section 28-2-2104, MCA, is amended to read:

15 **"28-2-2104. Obligations upon delay of payment.** (1) If a periodic or final payment that is required by
16 a construction contract to be paid by an owner to a contractor is delayed by more than 30 days from the date
17 the payment is required by the contract to be made, the owner shall pay to the contractor interest, beginning on
18 the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that
19 amount on the unpaid balance. If the contractor receives interest from the owner for a delayed payment by the
20 owner, the contractor shall ensure that any interest accrued on a delayed payment is distributed by the contractor
21 to subcontractors on a pro rata basis.

22 (2) If a periodic or final payment required by a subcontract to be paid by a contractor to a subcontractor
23 is delayed for more than 30 days plus 3 working days from the date the payment is required by the subcontract
24 to be made, the contractor shall pay to the subcontractor interest beginning on the day following the date when
25 the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance.
26 If a subcontractor receives interest from the contractor for a delayed payment by the contractor, the
27 subcontractor shall ensure that any interest accrued on the delayed payment is distributed by the subcontractor
28 to other subcontractors, if any, on a pro rata basis.

29 (3) ~~Interest is not required to be paid pursuant to this section unless the owner, contractor, or~~
30 ~~subcontractor, as appropriate, has been notified of the requirements of this section at the time the request for~~

1 ~~payment is made.~~ Acceptance of progress payments or final payment releases any claim for interest on the
2 payment."

3
4 **Section 2.** Section 28-2-2110, MCA, is amended to read:

5 **"28-2-2110. Limit on retainage.** (1) The maximum retainage applied to construction contracts subject
6 to the provisions of this part may not exceed 5% ~~10%~~ ~~if the construction contractor is performing by the terms~~
7 ~~of the contract.~~

8 (2) The retainage percentage withheld by an owner, as provided in subsection (1), from a construction
9 contractor is the maximum retainage that a construction contractor may withhold from a subcontractor.

10 (3) Retainage must be released upon the substantial completion FINAL ACCEPTANCE of each portion of
11 work for which a separate price is stated in the construction contract or upon completion of each portion of work
12 for which the price can be separately ascertained from the contractor's schedule of values."

13 - END -